

PALESTINE SOLIDARITY LEGAL SUPPORT

LEGAL ADVOCACY FOR HUMAN RIGHTS ACTIVISTS

August 22, 2014

The Board of Trustees
University of Illinois at Urbana-Champaign
352 Henry Administration Building, MC-35-
506 South Wright Street
Urbana, IL 61801
UIBOT@uillinois.edu

Dear Members of the Board of Trustees:

We write to bring to your attention the attached letters from legal organizations and law faculty to the University of Illinois at Urbana-Champaign's (UIUC) Chancellor Wise regarding the revocation of Steven Salaita's appointment to the American Indian Studies program in response to complaints about his statements on social media regarding Israel's war on Gaza.

Palestine Solidarity Legal Support (PSLS) is a national organization that aims to protect the rights of individuals advocating for Palestinian rights and expressing criticism of Israeli policies. As our attached letter with the Council on American-Islamic Relations (CAIR)– Chicago and the National Lawyers Guild (NLG) – Chicago makes clear, the complaints against Salaita that resulted in the University's withdrawal of its appointment must be viewed within the context of larger nation-wide efforts to silence discussion, debate and advocacy that is critical of Israel, especially on U.S. campuses. These efforts are being led by a number of politically motivated organizations who aim to shield Israel from accountability by silencing views with which they disagree.

We are alarmed by the continued refusal of Chancellor Wise to submit Salaita's appointment to the Board for final approval. The denial of his appointment mere days before it was to begin, and after the appointment had been announced by UIUC and relied on by Mr. Salaita, is a clear violation of his First Amendment rights. It constitutes the type of viewpoint discrimination that courts have long stated are unconstitutional. It also violates UIUC's obligations to respect the academic freedom of its faculty, a status which Salaita had attained as a de facto matter.

UIUC's failure to complete Salaita's appointment will be sure to have wide-ranging impact on all UIUC faculty, as well as the student body. As the letter from law faculty makes clear,

the constitutional problem underlying the withdrawal of an offer of employment to Professor Salaita on account of his opinions on the Middle East affects not only him individually, but all current and prospective faculty at the University of Illinois insofar as it will have the predictable and inevitable effect of chilling speech – both inside and outside the classroom – by other academics.

We urge you to right the wrong that is being committed against Salaita, and that threatens to have a ripple effect across UIUC and institutions of higher education nation-wide. This is

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necessary, not only as a matter of principle – to refuse to permit outside political influences to dictate the University’s decisions regarding faculty appointments and faculty speech – but also as a matter of law, based on UIUC’s obligations to protect the right of academics to speak out on matters of public concern, under both Illinois and Federal law.

Sincerely,

A handwritten signature in black ink, reading "Dima Khalidi". The signature is fluid and cursive, with a large initial 'D' and a trailing dot at the end.

Dima Khalidi
Director, Palestine Solidarity Legal Support

Encls: Letter from the Center for Constitutional Rights to Chancellor Wise

Letter from Palestine Legal Support, Council on American-Islamic Relations – Chicago,
and the National Lawyers Guild- Chicago Chapter to Chancellor Wise

Letter from Law Faculty to Chancellor Wise

Letter from the National Lawyers Guild to Chancellor Wise



August 7, 2014

Dr. Phyllis M. Wise
Chancellor
University of Illinois at Urbana-Champaign
Swanlund Administration Building
601 John Street
Champaign, IL 61820
chancellor@illinois.edu

Dear Dr. Wise:

The Center for Constitutional Rights (CCR) writes to express our considerable alarm about the decision of the University of Illinois at Urbana-Champaign to terminate the appointment of Professor Steven Salaita at the University based on the content of his constitutionally-protected speech critical of Israeli government practices in recent weeks. Your seemingly unprecedented decision to terminate the appointment of a tenured professor on such grounds violates Professor Salaita's clearly established constitutional rights as well as elementary principles of academic freedom to which the University purportedly subscribes. We urge you in the strongest terms to reconsider your unlawful course of action.

As you well know, in October 2013, the University's College of Liberal Arts and Sciences made an offer to Professor Salaita for an appointment, with tenure, in the College's American Indian Studies program; he soon after accepted your offer (which the University confirmed in writing) and resigned from his tenured position in the English Department at Virginia Tech University. Your offer letter expressly stressed the University's adherence to the American Association of University Professors' Statement of Principles on Academic Freedom and Tenure. The University's offer was naturally based in large part on Professor Salaita's strong scholarly record, which includes numerous publications criticizing militarism, colonialism and the unjust treatment of the Palestinian people.¹ His views (which he has long aired passionately and openly in many forums, including social media) are no doubt considered highly controversial by many in this country,² but Professor Salaita could rest assured that his tenured position and the foundational principles of academic freedom and expression would permit him to share his views without fear of censure or reprisal.

Accordingly, in recent weeks, Professor Salaita made a number of posts to his social media platforms that are deeply critical of the Israeli government's military and political actions in Gaza, all

¹ See, e.g. Steven Salaita, *Israel's Dead Soul* (2011); Steven Salaita, *The Uncultured Wars: Arabs, Muslims and the Poverty of Liberal Thought – New Essays* (2008); Steven Salaita, *The Holy Land in Transit: Colonialism and the Quest for Canaan* (2006); Steven Salaita, *Anti-Arab Racism in the USA: Where it Comes From and What it Means for Politics* (2006).

² See, e.g., Steven Salaita, *No Thanks: Stop saying 'support the troops'* Salon, Aug. 25, 2013; Steven Salaita, *Academics Should Boycott Israel: Growing movement takes next step*, Salon, Dec. 4, 2013.

in a context of a heated global conversation in reaction to the Israeli military's attacks on Gaza that exacted a heavy civilian toll. Given what Professor Salaita perceived to be atrocities committed by the Israeli government – in the context of a broader political framework of unjust occupation – his posts were, like so many thousands of others, hard-hitting, acerbic and for some audiences that disagreed, upsetting. Unlike traditional academic discourse, of course, quick, sharp and terse comment is in the very nature of the dynamic, competitive world of social media. And, for First Amendment purposes, it is plain that one cannot separate the content of speech from the manner in which it is expressed. *See Cohen v. California*, 403 U.S. 15 (1971) (First Amendment protects “Fuck the draft” emblem in public courthouse).

Nevertheless, despite Professor Salaita's obvious reliance on the terms of the University's appointment – by resigning from his tenured position at Virginia Tech, renting his Virginia home and preparing his entire family to move – you summarily terminated his appointment to a tenured position, without notice or any opportunity to be heard or to object. Your August 1, 2014 letter references your Office's failure to seek or obtain final authorization from the Board of Trustees as the reason for the termination of Professor Salaita; yet, leaving aside the procedural irregularities in your rationale,³ at bottom the University's decision to terminate his position is transparently due to the University's objection – or the objection of others pressuring the University – to the *substance* of his political expressions on an issue that is controversial and surfaces deeply held, passionate and sometimes harsh expressions of opinion.⁴ *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995) (“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.”).

An attempt by university officials to repress or penalize speech on a matter of public concern such as Israel/Palestine because of disagreement with its message is impermissible “viewpoint discrimination,” a serious First Amendment violation. *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992). As the Supreme Court has long stressed, “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Likewise, it is no defense to your attempted viewpoint censorship to assert that the *manner* in which Professor Salaita expressed his views was uncivil or harsh or that the substance or style of his communication would offend his audience. The Supreme Court has never accepted a desire to shelter offended listeners from harsh messages, recognizing that powerful and provocative speech is often necessarily “vehement, caustic and sometimes unpleasant.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). This recognition embodies “a profound national commitment to the principle

³ Although Professor Salaita's appointment was effective August 16th, your termination letter stated that his appointment would not be recommended for submission to the Board in September, after his start date.

⁴ We are aware that numerous advocates pressured the University to punish Mr. Salaita for his views. For example, the Simon Weisenthal Center wrote to the University advocating for his termination because of his political expression. *See* http://jewishvoiceny.com/index.php?option=com_content&view=article&id=8125:wiesenthal-center-calls-ui-profes;%20see%20also%20Tucker%20Carlson,%20http://dailycaller.com/2014/07/21/university-of-illinois-professor-blames-jews-for-anti-semitism/.

that debate on public issues should be uninhibited, robust and wide-open.” *Id.* Censoring speech to protect certain audiences – a classically prohibited “heckler’s veto,” see *Reno v. American Civil Liberties Union*, 521 U.S. 844, 880 (1997) – is unacceptable because “in public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment.” *Boos v. Barry*, 485 U.S. 312, 322 (1988); see also *Snyder v. Phelps*, 131 S. Ct. 1207, 1219 (2011) (providing full First Amendment protections to Westboro Baptist Church hecklers at military funerals override claims of emotional distress suffered by family members).

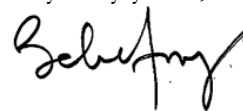
Beyond the First Amendment violation committed here, the University has betrayed elementary principles of academic freedom which naturally extends protections to faculty members’ ability to “speak or write as citizens,” and which must be free from “institutional censorship or discipline.” See American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure. Summarily dismissing a tenured professor – without any notice or hearing – for expressing his opinion on a matter of public concern undermines the critical role universities play in a democracy. The university is “peculiarly the ‘marketplace of ideas,’” *Keyishian v. Board of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967); it must encourage critical thought and questioning of social and political orthodoxy, see *id.*, and is charged with producing future leaders acculturated in the norms of a pluralistic, democratic country. *Grutter v. Bollinger*, 539 U.S. 306, 324–325 (2003). In taking such precipitous action, you have sent the anti-democratic message to your faculty and students that censorship – rather than engagement, reflection or critique – is an appropriate response when political orthodoxy is challenged. The Supreme Court warned against such self-defeating academic censorship, which previously arose during the McCarthy-era:

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Keyishian v. Board of Regents, 385 U.S. 589, 684 (1967).

Your actions have inflicted serious damage not just on one scholar; they have set your University on an unsustainable course charted against elementary constitutional principles. We strongly urge you to retract this precipitous decision and reaffirm your commitment to academic freedom and the right of members of the University of Illinois community to engage vocally and vociferously on matters of great public concern.

Very truly yours,



Baher Azmy
Legal Director
Center for Constitutional Rights

VIA ELECTRONIC MAIL AND U.S. FIRST CLASS MAIL

August 8, 2014

Dr. Phyllis M. Wise
Chancellor
University of Illinois at Urbana-Champaign
Swanlund Administration Building
601 John Street
Champaign, IL 61820
chancellor@illinois.edu

Dear Dr. Wise:

As organizations dedicated to upholding the rights of individuals to advocate their political views without repression, we urge the University of Illinois at Urbana-Champaign (UIUC) to reinstate Professor Steven Salaita. UIUC recently took the drastic measure of terminating Prof. Salaita, mere days before his appointment was to begin, in direct response to his social media posts critical of Israel's human rights abuses. This action is a severe violation of Salaita's First Amendment and academic freedom rights. It is also an example of the dangerous capitulation of the university to campaigns that aim to shield Israel from scrutiny by silencing all advocacy for Palestinian rights, especially in academia.

Professor Salaita has long been active on social media, making pointed, sardonic, and controversial statements on Twitter. His tweets during Israel's latest military assault on Gaza (during which nearly 2000 Palestinians have been killed, 10,000 injured, and approximately 485,000 internally displaced), however "uncivil" the University perceived them to be, cannot be an excuse for the University to renege on his appointment, in violation of his constitutional rights. Indeed, a University spokeswoman defended Salaita's tweets in response to complaints, stating "Faculty have a wide range of scholarly and political views, and we recognize the freedom-of-speech rights of all of our employees."¹ The AAUP's statement in response to the University's actions also defended faculty rights to engage in such speech:

...faculty comments made on social media, including Twitter, are largely extramural statements of personal views that should be protected by academic freedom. While

¹ Christine Des Garennes, Soon-to-be UI prof's Mideast posts drawing ire, The News-Gazette, July 22, 2014, <http://www.news-gazette.com/news/local/2014-07-22/updated-soon-be-ui-profs-mideast-posts-drawing-ire.html>.

Professor Salaita's scholarship does appear to deal with the topic of Palestine, his posts were arguably not intended as scholarly statements but as expressions of personal viewpoint. Whether one finds these views attractive or repulsive is irrelevant to the right of a faculty member to express them. Moreover, the AAUP has long objected to using criteria of civility and collegiality in faculty evaluation because we view this as a threat to academic freedom. It stands to reason that this objection should extend as well to decisions about hiring, especially about hiring to a tenured position.²

Moreover, the Supreme Court has held that “speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”³ Indeed, the First Amendment would be meaningless if it did not protect the expression of the most acerbic and scathing of dissent, and instead required a parsing of what is “civil” and acceptable speech and what speech may be censored, based on the vagaries of reigning political orthodoxies.

UIUC’s dismissal of Salaita because his private tweets support Palestinian rights constitutes impermissible “viewpoint discrimination” – a violation of his First Amendment rights.⁴ As a public university, UIUC is required to adhere to First Amendment and academic freedom principles that protect the rights of faculty members to “speak or write as citizens,” and to be free from “institutional censorship or discipline.” It is also obligated to protect faculty’s academic freedom to decide collectively, as a department, under a university’s bylaws, to invite a respected colleague to join the department, as we understand to have happened in this case. UIUC’s censoring of political and academic discussion casts exactly the “pall of orthodoxy” on academics on matters of public concern that the Supreme Court warned against in the wake of the McCarthy era:

To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.⁵

² See American Association of University Professors, Statement on Case of Steven Salaita, Aug. 7, 2014, <http://www.aaup.org/media-release/statement-case-steven-salaita>.

³ *Connic v. Myers*, 461 U.S. 138, 145 (1983)

⁴ See American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure; *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

⁵ *Keyishian v. Board of Regents*, 385 U.S. 589, 684 (1967); see also *Adler v. Board of Education*, 342 U.S. 485 (1952); *Cramp v. Board of Public Instruction*, 368 U.S. 278, 82 S.Ct. 275, (1961); *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972); *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274 (1977); *Adams v. Trs. of the Univ. of N.C. - Wilmington*, 640 F.3d 550 (4th Cir. 2011) (*held*: public university professors are protected by the First Amendment when they speak with a citizen’s interest on political and social issues that arise within the campus community or society at large).

In addition to violating his free speech and academic freedom rights, the University's action is a severe example of what has been a long-term and consistent effort to intimidate, punish and censor academics who dare criticize Israel or support Palestinian rights. Palestine Solidarity Legal Support has documented many such attacks on academics in the last several years, including the ongoing campaign against Palestinian Professor Rabab Abdulhadi at San Francisco State University attacking her research trips to Palestine.⁶ Other efforts to investigate, obstruct and punish academics that speak out about Palestine include the campaigns against University of California Los Angeles professor David Shorter and California State University David Klein for posting links about the boycott, divestment and sanctions movement on their university websites;⁷ complaints against San Jose State Professor Persis Karim for organizing a conference on how to teach Israel-Palestine;⁸ attempts to cancel a speaking tour by Israeli academic Ilan Pappé at California State Universities;⁹ and efforts to cancel a conference on legal approaches to Palestinian rights at UC Hastings,¹⁰ to name only a few instances in the last three years.

The campaign against Salaita by groups such as the Simon Wiesenthal Center¹¹ must be placed within this larger effort to make scholarship and advocacy on Palestine taboo by threatening those academics who engage in it with veritable blacklisting, loss of employment, and emotionally draining personal attacks. The basis of all of these attacks is that criticism of Israel is anti-Semitic, a false equation that would effectively silence critical discussion of one of the most important international issues of our time. Universities must resist the pressure to respond to politically motivated campaigns that aim to silence views that certain individuals object to or find offensive.

⁶ See <http://palestinelegalsupport.org/2014/06/19/san-francisco-state-university-president-defends-professor-rabab-abdulhadi-s-travel-and-research-after-latest-mccarthyist-campaign/>.

⁷ See Professor David Shorter's controversial link on course website is protected by UC bylaws, April 26, 2012, http://dailybruin.com/2012/04/26/_professor_david_shorters_controversial_link_on_course_website_is_protected_by_uc_bylaws/; <http://palestinelegalsupport.org/2013/09/25/ccr-and-nlg-stand-up-to-protect-cal-state-professor-attacked-for-criticizing-israel-on-university-server/>

⁸ See MESA Committee on Academic Freedom, Letter concerning San Jose State University response to attacks against Professor Persis Karim after conference on teaching the Israeli-Palestinian conflict, Jadaliyya, May 23, 2013, <http://www.jadaliyya.com/pages/index/11864/letter-concerning-san-jos%C3%A9-state-university-respon>.

⁹ See State University hosts Israeli historian Ilan Pappé- says no to McCarthyite campaign, MuzzleWatch, Feb. 18, 2012, <http://muzzlewatch.com/2012/02/18/state-university-hosts-israeli-historian-ilan-pappe-says-no-to-mccarthyite-campaign/>.

¹⁰ See Sue Fishkoff, Calif. Law school draws fire for disavowing Palestinian rights conference, Jewish Telegraphic Agency, April 14, 2011, <http://www.jta.org/2011/04/14/news-opinion/united-states/calif-law-school-draws-fire-for-disavowing-palestinian-rights-conference>.

¹¹ See Hannah Hayes, Wiesenthal Center calls UI professor's controversial Twitter posts anti-Semitic, The Jewish Voice, August 6, 2014, http://jewishvoiceny.com/index.php?option=com_content&view=article&id=8125:wiesenthal-center-calls-ui-profes.

We therefore urge UIUC to reverse its decision, and to ensure that the rights of members of the university community to engage in First Amendment-protected expression are safeguarded from efforts to silence them for disagreeing with their views.

Sincerely,

Council on American-Islamic Relations – Chicago office (CAIR-Chicago)

National Lawyers Guild- Chicago chapter

Palestine Solidarity Legal Support

August 15, 2014

Dr. Phyllis M. Wise
Chancellor
University of Illinois at Urbana-Champaign
Swanlund Administration Building
601 John Street
Champaign, IL 61820

Dear Dr. Wise:

As scholars of free speech and constitutional law, we write to express alarm at your decision to revoke a tenured offer of appointment to Professor Steven Salaita to join the American Indian Studies program at the University of Illinois at Urbana-Champaign on account of his statements on social media criticizing Israel's conduct of military operations in Gaza.

In our view, the decision to withdraw an appointment to a prospective faculty member because of his statements on a matter of public concern raises serious concerns under established principles of academic freedom. Those principles are enshrined in Illinois law, in the U.S. Constitution, and in the written principles of the American Association of University Professors. Ironically, less than a year ago, you reaffirmed the university's commitment to academic freedom as a "core principle" in touting "the critical importance of the ability of faculty to pursue learning, discovery and engagement without regard to political considerations."¹

American universities have been the home of vigorous political debate and disagreement for many decades on issues such as racial justice, the Vietnam War, pornography, nuclear power and nuclear weapons, South African apartheid, U.S. foreign policy and intervention in Central America, Iraq, and Afghanistan, rights of religious minorities, the rights of lesbians and gay men to serve openly in the U.S. military, and the relations between Israel and Palestine. In connection with these and other issues faculty, students and staff have engaged a range of tactics and strategies to express their political views including demonstrations and sit-ins, taking over university buildings, calling for divestment or boycott, and condemning public policies and laws. More recently, with the rise of social media, faculty and student expression on matters of public concern have taken place on Twitter, Facebook, and other internet fora. As a national community of engaged scholars we treasure the rich climate in which we teach, learn and exchange ideas – often disagreeing with one another vehemently both inside and outside the walls of the university.

Retaliation by public universities against educators who participate in debate of matters of public concern has long been condemned by the U.S. Supreme Court as an affront to the free speech rights of academics, and even more, as an affront to the very

¹ *Statement from Chancellor Phyllis Wise regarding the proposed boycott by U.S. universities of Israeli academic institutions*, December 27, 2013, available at: <http://illinois.edu/lb/article/1303/80478>.

essence of democratic self-rule in a free society. In fact, a great many of the Supreme Court's free speech cases have involved threats to the free speech rights of educators.² These cases establish a fundamental and unwavering principle: "[S]peech concerning public affairs is more than self-expression; it is the essence of self-government."³ The Court has frequently reaffirmed that speech on public issues occupies the "highest rung of the hierarchy of First Amendment values," and is entitled to special protection.⁴

In few other precincts of society are First Amendment values more important than in the academy. As the Court has noted: "[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."⁵ Without question, the withdrawal of a promised offer of employment to Professor Salaita on account of his opinions on the Middle East patently violates this well-established Constitutional principle, imposing a particular orthodoxy with respect to a complex matter of public concern and punishing a prospective faculty member who refuses to comply with that orthodoxy.

Beyond general professional principle, the First Amendment limits the ability of public employers to make hiring decisions based on hostility to a particular viewpoint. As the Supreme Court explained in the 1990 case of *Rutan v. Republican Party of Illinois*,⁶ "conditioning hiring decisions on political belief and association plainly constitutes an unconstitutional condition, unless the government has a vital interest in doing so." A university may not choose to deny a job to a professor based on political disagreements, as the Supreme Court ruled in the 1972 case of *Perry v. Sindermann*.⁷

What is more, the constitutional problem underlying the withdrawal of an offer of employment to Professor Salaita on account of his opinions on the Middle East affects not only him individually, but all current and prospective faculty at the University of Illinois insofar as it will have the predictable and inevitable effect of chilling speech – both inside and outside the classroom – by other academics. The University of Illinois at Urbana-Champaign's website currently lists 27 open academic searches.⁸ It is reasonable to conclude that any person considering applying for any of those positions would be very concerned about any opinions they might have expressed, either in their scholarship or in their private capacity, on the conflict in the Middle East or on other controversial questions. The University has sent a clear message to all prospective job candidates that their suitability for employment at the University of Illinois may turn on the views they have voiced on this or some other complex matter of public concern.

² See e.g.: *Adler v. Board of Education*, 342 U.S. 485 (1952); *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972); *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274 (1977).

³ *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964).

⁴ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982).

⁵ *Keyishian v. Board of Regents*, 385 U.S. 589, 684 (1967).

⁶ 497 U.S. 62 (1990), <http://supreme.justia.com/cases/federal/us/497/62/case.html>.

⁷ 408 U.S. 593 (1972), <http://supreme.justia.com/cases/federal/us/408/593/case.html>.

⁸ <https://jobs.illinois.edu/faculty-positions>.

Tragically, the University of Illinois's decision to rescind a job offer to Professor Salaita on account of his views on the Middle East evokes similarly unconstitutional litmus tests applied to educators in Illinois in the past when public officials sought to impose upon the academy a particular orthodoxy on a matter of public concern. As a website set up by the University of Illinois at Urbana-Champaign's Student Life and Cultural Archival Program Illinois well documents,⁹ Illinois has unfortunately distinguished itself in its efforts over the years to purge from its teaching ranks faculty who held views that were deemed un-American or otherwise controversial. In 1947 Illinois State Senator Paul Broyles issued a call for a commission to investigate communism in Illinois. According to Broyles, "The increasing menace of communism is now widely recognized and we must take steps to keep un-Americanism under control." The legislature created the Seditious Activities Investigation Commission, or Broyles Commission, and in 1949 it requested a series of measures to rid Illinois of communists, including requiring "non-Communist oaths" from public employees, including professors at the University of Illinois, making the support of communism a felony, and prohibiting communists from holding office or teaching in public schools. Students and faculty at the University of Illinois were actively engaged in resisting this anti-communist wave, arguing that these laws violated, among other things, the right to academic freedom.¹⁰

University of Illinois archives also document a similarly troubling threat to academic freedom in the case of Professor Leo F. Koch: In 1960, Professor Koch, a professor in the biology department at the University of Illinois, entered into a campus debate on human sexuality by writing a letter which was published in the Daily Illini. In it, Koch defended premarital sex and trial marriages among mature adults.¹¹ The resulting storm over the letter led to Koch's suspension and eventual firing by university President David Dodds Henry, who called the letter "offensive and repugnant." Despite protests from groups arguing for academic freedom, the board of trustees upheld Koch's dismissal and the Illinois Supreme Court refused to intervene.¹² The University was censured by the American Association of University Professors for the ouster.¹³ The controversy surrounding Professor Koch's termination figured prominently in both local and national media.¹⁴

Your university's website summarizes the history of campus activism quite well:

Academic and social freedoms in Illinois educational institutions had been curtailed in the Cold War era by initiatives such as the Clabaugh Act and Broyles Bills. Students began to challenge these directives through organizations like the Student Committee on Political Expression and the DuBois Club as well as setting

⁹ *Conflict over Academic Freedom and Free Speech at U of I: Overview*,

<http://archives.library.illinois.edu/slc/researchguides/coldwar/freespeech/>

¹⁰ See *The Broyles' Bills*, <http://archives.library.illinois.edu/slc/researchguides/coldwar/freespeech/broyles.php>.

¹¹ <http://archives.library.illinois.edu/slc/researchguides/coldwar/freespeech/koch.php>.

¹² *Top Court Voids Race On Ballots*, The Pittsburgh Press, January 13, 1964.

¹³ *Universities: Marxmanship at Illinois*, Time Magazine, March 27, 1964, p. 74.

¹⁴ See e.g. *Chicago Tribune*, "Affirm U. of I. Dismissal: Trustees Act on Academic Freedom Plea," Sept. 22, 1960, p. N1; J.R. Goddard, *Dr. Koch Seeks Reappointment: Sex on Campus? 'You Can't Shrug Off Biological Needs'*, The Village Voice, November 17, 1960, available at:

<http://news.google.com/newspapers?id=L2oQAAAAIBAJ&sjid=3osDAAAAIBAJ&pg=6469,308955&dq=leo-koch&hl=en>.

up a “Free Speech Area” near the Illini Union. However, their activities were frequently met with charges of subversion and Communism, and violence erupted over the University’s decision to bar Chicago 7 lawyer William Kunstler from speaking on campus.¹⁵

Given the circumstances surrounding the rescission of the accepted offer of employment to Professor Salaita on account of his speech in connection with the conflict in the Middle East, archivists at the University of Illinois will likely include this extremely unfortunate incident in the set of examples of threats to academic freedom and free speech on the UICU campus. Restoring his appointment would avoid the unfortunate continuation of a legacy of threats to academic freedom on your campus.

The illegality of threats to the academic freedom of faculty because of their controversial speech have been well established by the U.S Supreme Court. For instance, a 1949 amendment to New York’s Education Law, known as “the Feinberg Law,” disqualified from employment in the educational system any person who advocated the overthrow of government by force, violence, or any unlawful means, or published material advocating such overthrow or organized or joined any society or group of persons advocating such doctrine. The law was largely aimed at removing members of the Communist party from the profession of teaching, and required prospective teachers to sign loyalty oaths and disavow membership in the Communist party. Several prospective teachers who refused to sign the Feinberg Law oaths were denied teaching posts under the law and they challenged the law claiming that their First Amendment Rights had been abridged. The Supreme Court agreed and held that the Feinberg Law was unconstitutional insofar as it abridged the First Amendment rights of educators. The Court observed the following about the Feinberg Law, in terms that are of equal relevance in condemning the actions taken in Professor Salaita’s case:

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.¹⁶

The principles and cases protecting a broad right of free expression for educators apply outside the bounds of either conventional scholarship or the four walls of a classroom. Consider the American Association of University Professors (AAUP) 1940 Statement of Principles of Academic Freedom and Tenure,¹⁷ which sets out the general

¹⁵ *The Fight for Freedom of Speech and Expression in the 1960s*,

<http://archives.library.illinois.edu/slc/researchguides/coldwar/freespeech/freespeech.php>.

¹⁶ *Keyishian v. Board of Regents*, 385 U.S. 589, 684 (1967), quoting *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250 (1957).

¹⁷ <http://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>.

understanding of academic freedom that the Supreme Court has applied and to which American universities like the University of Illinois adhere. It proclaims that when professors “speak or write as citizens, they should be free from institutional censorship or discipline.” And for good reason. As the Illinois AAUP recently noted in connection with the Salaita controversy, “the virtual classroom today has no limits.”¹⁸ Universities benefit from their faculty playing the role of public intellectuals, which now frequently means using social media like Twitter.

The withdrawal of the offer of employment to Professor Salaita threatens to punish a colleague who has participated in a rich, and at times heated, climate of debate on the issue of justice in the Middle East, and it will surely chill debate by other scholars in the future. For this reason we take particular offense at the notion that the University of Illinois at Urbana-Champaign would succumb to pressure by those who disagreed with Professor Salaita’s viewpoint on current Israeli policy and withdrawing an offer of employment on the University of Illinois faculty, as we would take offense at any university’s bowing to external pressure regarding a professor’s outspoken views on other issues.

We recognize that universities may consider a wider range of factors in deciding whether to hire a potential faculty member than in deciding whether to dismiss a current faculty member. However, that principle is irrelevant here. Even as a technical legal matter, Professor Salaita was already a de facto member of the University of Illinois faculty under the principle of promissory estoppel as articulated by the Illinois Supreme Court.¹⁹ Moreover, the timing and manner of Professor Salaita’s dismissal strongly indicate the sort of viewpoint discrimination that would violate the First Amendment even at the hiring stage.

It should go without saying that the signatories to this letter join this statement not because they necessarily endorse the statements Professor Salaita has made on the Israeli/Palestinian conflict; in fact we reflect a broad spectrum of views on how, if at all, academics and others in the U.S. ought to respond to that conflict. These differences are simply irrelevant here, however. Regardless of whether one supports or opposes the cause to which this particular advocacy is responding, we all firmly believe that academics have a right to express their political views through a wide range of protected speech, including through social media, without negative reprisal from current or future employers.

We urge you in the strongest of terms to submit to the University’s board of trustees the appointment of Professor Salaita to the University of Illinois at Urbana-Champaign’s American Indian Studies program.

Sincerely, (list in formation)*

¹⁸ <http://academeblog.org/2014/08/06/illinois-aaup-committee-a-statement-on-steven-salaita-and-uiuc/>.

¹⁹ *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 906 N.E.2d 520 (Ill. 2009).

Katherine Franke, Sulzbacher Professor of Law, Columbia University

Michael C. Dorf, Robert S. Stevens Professor of Law, Cornell University Law School

Sheri Johnson, Professor of Psychology, UC Berkeley

Steven H. Shiffrin, Charles Frank Reavis Sr. Professor of Law, Emeritus, Cornell University Law School

Cynthia G. Bowman, Dorothea S. Clarke Professor of Law, Cornell University Law School

Ira C. Lupu, F. Elwood & Eleanor Davis Professor of Law, Emeritus, George Washington University Law School

Aziz Rana, Associate Professor of Law, Cornell University Law School

Nan D. Hunter, Professor of Law, Georgetown University Law Center

Kendall Thomas, Nash Professor of Law, Columbia Law School

Janet Halley, Harvard Law School

Ariela Gross, John B. and Alice R. Sharp Professor of Law and History, USC Gould School of Law

Gregory P. Magarian, Professor of Law, Washington University School of Law

Ruthann Robson, Professor of Law & University Distinguished Professor, City University of New York School of Law

Vasuki Nesiah, Associate Professor of Practice, The Gallatin School. New York University

Valorie K. Vojdik, Professor of Law and Director of Clinical Programs, University of Tennessee College of Law

Hani Sayed, Associate Professor and Chair, Department of Law, American University in Cairo

Daniel Weinstock, Professor, Faculty of Law, Director, Institute for Health and Social Policy, McGill University

Jeremy K. Kessler, Associate Professor of Law (Designate), Columbia Law School

Daria Roithmayr, USC Gould School of Law, George T. and Harriet Pflieger Professor of Law

Nelson Tebbe, Professor of Law, Brooklyn Law School, Visiting Professor of Law, Cornell Law School

Kevin Heller, Professor of Criminal Law, SOAS, University of London, Principal Fellow, Melbourne Law School

Victor M. Muñoz-Fraticelli, Associate Professor, Faculty of Law and Department of Political Science, McGill University

Seval Yildirim, Professor, Whittier Law School

Charles-Maxime Panaccio, Associate Professor, Faculty of Law, University of Ottawa

Aslı Ü. Bâli, Professor of Law, UCLA School of Law

Anil Kalhan, Associate Professor of Law, Drexel University

George Bisharat, Professor, UC Hastings College of the Law

M. Isabel Medina, Ferris Family Distinguished Professor of Law, Loyola University New Orleans College of Law

Eric M. Freedman, Siggie B. Wilzig Distinguished Professor of Constitutional Rights, Maurice A. Deane Law School of Law at Hofstra University

Gerald P. Lopez, Professor of Law, UCLA School of Law

Sonia Katyal, Associate Dean for Research, Joseph M. McLaughlin Professor of Law, Fordham University School of Law

** (Affiliations with universities are listed for purposes of identification only. No signer of this letter claims to speak for the university at which he or she works).*

NATIONAL LAWYERS GUILD

132 Nassau Street, Room 922, New York, NY 10038 212-679-5100 Fax 212-679-2811 nlg.org

August 22, 2014

Dr. Phyllis M. Wise
Chancellor
University of Illinois at Urbana-Champaign
Swanlund Administration Building
601 John Street
Champaign, IL 61820

Dear Dr. Wise:

Since its formation in 1937 as the nation's first racially integrated bar association, the National Lawyers Guild has steadfastly advocated for the protection of constitutional, human, and civil rights. We write to you today to urge the University of Illinois at Urbana-Champaign (UIUC) to reaffirm its commitment to the core value of academic freedom -- the bedrock of American education -- by reinstating Professor Steven Salaita's employment contract.

UIUC recently repudiated its commitment to employ Professor Salaita, based on social media posts that he published as a private person. These posts accused Israel of committing human rights abuses.

To our knowledge, neither the faculty nor the chair of the American Indian Studies Program, both of whom had approved Professor Salaita's appointment, were consulted regarding this decision.

This action clearly violates Professor Salaita's First Amendment and academic freedom rights. A professor's lawful off-campus communications as a private person cannot justify a University decision to renege on his appointment, regardless of whether his choice of language may be viewed as "uncivil." You, yourself, reaffirmed this principle last December, even as you took an official University stance in opposition to the academic boycott of Israel, when you stressed that UIUC continued to value academic freedom as one of its core principles, stressing "the critical importance of the ability of faculty to pursue learning, discovery and engagement without regard to political considerations."¹

"[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection."² It is a basic First Amendment principle that the Constitution protects even positions widely rejected as having crossed the line between "civil" and "uncivil" discourse.³ Requiring deference, instead, to subjective personal standards of acceptably "civil" discourse and mainstream viewpoints enjoys no place under First Amendment law.

¹ Christine Des Garennes, "Soon-to-be UI prof's Mideast posts drawing ire," THE NEWS-GAZETTE (July 22, 2014), <http://www.news-gazette.com/news/local/2014-07-22/updated-soon-be-ui-profs-mideast-posts-drawing-ire.html>.

² *Connick v. Myers*, 461 U.S. 138, 145 (1983)

³ *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

Daniel Gregor
*Interim Executive
Director*

Azadeh
Shahshahani
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Ian Head
Natasha Banann
Executive Vice Presidents

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As a public university, UIUC is required to honor its faculty's First Amendment rights. The decision to withdraw Professor Salaita's appointment were prompted by informal but forceful statements critical of Israeli policy made by Professor Salaita in his personal Twitter account. The statements were made during Israel's recent invasion of Gaza. Many Americans, including Professor Salaita, speaking as a private person, have joined hundreds of thousands of others around the world who have responded with shock and rage in response to news that nearly 2,000 Palestinian civilians, including hundreds of children, have been killed, while nearly half a million are now homeless.

But even had he spoken out as the sole voice against these horrors, Professor Salaita's political statements, made during his free time, would have been protected speech, and cannot be the basis of adverse actions by a public institution, such as non-hiring, firing, or rescission of an academic appointment. "Civility" or "collegiality" concerns based on administrators' personal dislikes for political views or statements expressed by an incoming faculty appointee, in his private life, cannot justify the rescission of a faculty appointment by a public university. This is a bedrock principle of academic freedom under the First Amendment.¹

The University is also obligated to protect its faculty's individual and collective academic freedom rights, including its right to decide collectively, as a department, under university bylaws or other rules, to invite a respected colleague to join the department, as we understand to have happened in this case. Your unilateral action, taken without prior consultation with and support by the faculty of the concerned department, also appears to violate the University faculty's academic freedom, as well as Professor Salaita's individual rights.

We respectfully draw your attention to the condemnation of your action by the American Association of University Professors, as a violation of longstanding principles of faculty free speech and academic freedom:

...faculty comments made on social media, including Twitter, are largely extramural statements of personal views that should be protected by academic freedom. While Professor Salaita's scholarship does appear to deal with the topic of Palestine, his posts

1

To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Keyishian v. Board of Regents, 385 U.S. 589, 684 (1967), quoting *Sweezy v. New Hampshire*, 354 U.S. 234 (1957). See *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972); *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274 (1977); *Adams v. Trustees. of the Univ. of N.C.-Wilmington*, 640 F.3d 550 (4th Cir. 2011) (*held*: public university professors are protected by the First Amendment when they speak as private persons on political and social issues, both off campus and on campus); cf. *Garcetti v. Ceballos*, 547 U.S. 410, 417-18 (2006) ("the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public.") (quoting *Pickering v. Board of Education*, 391 U.S. 563 (1968).

were arguably not intended as scholarly statements but as expressions of personal viewpoint. *Whether one finds these views attractive or repulsive is irrelevant to the right of a faculty member to express them. Moreover, the AAUP has long objected to using criteria of civility and collegiality in faculty evaluation because we view this as a threat to academic freedom. It stands to reason that this objection should extend as well to decisions about hiring, especially about hiring to a tenured position.*²

Your action forcefully reminds us of the hugely destructive impact of nearly half a century of McCarthyism upon academic freedom in this country, as forcefully expressed in the letter to you by the Committee for the Open Discussion of Zionism. Specific recent examples of this despicable phenomenon have been summarized in the letter from NLG-Chicago, Palestinian Solidarity Legal Support, and CAIR-Chicago.³ These attacks rest upon cynical perversion of our society's abhorrence of anti-Semitism into a mighty force for the suppression of the rising tide of criticism of Israeli brutality against the indigenous Palestinian populations of the West Bank, East Jerusalem, and Gaza. We well understand and appreciate the power of such pressure, but we cannot abide by the sacrificing of free speech and academic freedom, in response to it. The Supreme Court has emphatically reminded us that even the very real anti-Semitic speech of the American Nazi movement is protected by the First Amendment.⁴

We categorically reject the hypocritical tarring, as anti-Semitism, of advocacy efforts in the U.S. to end what is widely perceived around the world as racism, apartheid, and egregious violations of human rights by Israel and specifically, in this case, Israel's collective punishment of the civilian population of Gaza and destruction of Gaza's civil society, in violation of international law. Such advocacy -- demanding adherence to social and egalitarian standards now accepted around the world as the essential hallmark of all democratic societies -- is no more "anti-Semitic" than the advocacy of our U.S. civil rights movement to end racial segregation in this country was "racist."

Please immediately reinstate Professor Salaita's appointment, as the First Amendment and your own commitment to academic freedom on the UCIC campus compel you to do.

Sincerely,



Azadeh N. Shahshahani

President

² AAUP, Statement on Case of Steven Salaita (Aug. 7, 2014) (emphasis added), <http://www.aaup.org/media-release/statement-case-steven-salaita>; see AAUP, 1940 Statement of Principles on Academic Freedom and Tenure.

³ We acknowledge our indebtedness to these excellent letters.

⁴ *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).